

**RULES
OF
THE TENNESSEE DEPARTMENT OF MENTAL HEALTH
AND DEVELOPMENTAL DISABILITIES**

**CHAPTER 0940-5-40
MINIMUM PROGRAM REQUIREMENTS FOR ALCOHOL AND DRUG ABUSE
PREVENTION PROGRAM FACILITIES**

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0940-5-40-.01 DEFINITIONS.

- (1) Abuse. The infliction of physical pain, injury, or mental anguish on a participant by a caretaker. Abuse includes "exploitation" as defined by these rules.
- (2) A.D.A. Americans with Disabilities Act.
- (3) Advance Directive. A written statement such as a living will, a durable power of attorney for health care or a do not resuscitate order relating to the provision of health care when the individual is incapacitated.
- (4) ASHRAE. American Society of Heating, Refrigeration and Air Conditioning Engineers.
- (5) Alcohol and/or Other Drug Abuse. A condition characterized by the continuous or episodic use of alcohol and/or other drugs resulting in social impairment, vocational impairment, psychological dependence or pathological patterns of use as defined in currently accepted diagnostic nomenclature.
- (6) Alcohol and/or Other Drug Dependency. Alcohol and/or other drug abuse which results in the development of tolerance or manifestation of alcohol and/or other drug abstinence syndrome upon cessation of use as defined in currently accepted diagnostic nomenclature.
- (7) Alternative Services. Alternative Services provide for the participation of target populations in activities that exclude substance abuse. The assumption is that constructive and healthy activities offset the attraction to, or otherwise meet the needs usually filled by alcohol, tobacco, and other drugs and would therefore minimize or alleviate the need to use these substances.
- (8) Ambulatory Participant. A participant who is physically and mentally capable under emergency conditions of finding a way to safety without physical assistance from another person. An ambulatory participant may use a cane, wheelchair or other supportive device and may require verbal prompting.
- (9) Assessment. Assessment measures individuals who have indulged in inappropriate use of tobacco, alcohol, and illegal drugs, to assess whether their behavior can be reversed through education or requires treatment.

(Rule 0940-5-40-.01, continued)

- (10) At-risk Youth. Youth who are at risk for developing adolescent problem behaviors (alcohol and drug use, delinquency, teen pregnancy, dropping out of school, and violence).
- (11) Board. The Board for Licensing Health Care Facilities.
- (12) Branch Office. A location where alcohol and drug prevention and treatment services are provided and located sufficiently close (usually within 100 miles from a parent office) to share administrative services with the parent office and must maintain the same corporate name of the parent.
- (13) Capable of Self-Preservation. A person is capable of responding to an approved emergency signal, including prompting by voice, by following a pre-taught evacuation procedure within a reasonable time limitation whether or not the person is fully aware of the reasons for the action. A person is capable of self-preservation if the person is able to transfer unassisted from the bed or another fixed position to an individualized means of mobility, which is continuously available, and able to demonstrate the ability to transverse a pre-defined means of egress from the facility within thirteen (13) minutes. Persons who have security measures imposed upon them beyond their control, which prevents their egress from the facility within a reasonable time limitation, are not capable of self-preservation.
- (14) Cardiopulmonary Resuscitation (CPR). The administering of any means or device to restore or support cardiopulmonary functions in a patient, whether by mechanical devices, chest compressions, mouth-to-mouth resuscitation, cardiac massage, tracheal intubation, manual or mechanical ventilations or respirations, defibrillation, the administration of drugs and/or chemical agents intended to restore cardiac and/or respiratory functions in a patient where cardiac or respiratory arrest has occurred or is believed to be imminent.
- (15) Chief Executive Officer or Director. The person appointed, designated, or hired by the governing body to be responsible for the day-to-day operation of the facility or facilities operated by the licensee.
- (16) Commissioner. The Commissioner of the Tennessee Department of Health or his or her authorized representative.
- (17) Competent. For the purposes of this chapter only, an individual who has decision-making capacity.
- (18) Corrective Action Plan/Report. A report filed with the department by the facility after reporting an unusual event. The report must consist of the following:
 - (a) the action(s) implemented to prevent the reoccurrence of the unusual event,
 - (b) the time frames for the action(s) to be implemented,
 - (c) the person(s) designated to implement and monitor the action(s), and
 - (d) the strategies for the measurements of effectiveness to be established.
- (19) Department. The Tennessee Department of Health.
- (20) Do Not Resuscitate (DNR) Order. An order entered by the participant's treating physician in the participant's medical record which states that in the event the participant suffers cardiac or respiratory arrest, cardiopulmonary resuscitation should not be attempted. The order may contain limiting language to allow only certain types of cardiopulmonary resuscitation to the exclusion of other types of cardiopulmonary resuscitation.

(Rule 0940-5-40-.01, continued)

- (21) **Exploitation.** The improper use by a caretaker of funds which have been paid by a governmental agency to a participant or to the caretaker for the use of care of the participant; the "borrowing" or improper solicitation, use or conversion of any monies or property paid by a person or entity to a participant or to the caretaker for the use or care of the participant; engaging in sexual contact or sexual penetration with a participant by the caretaker; coercion, conspiring with or aiding a participant to engage in any criminal activity by the caretaker.
- (22) **Facility.** An institution, treatment resource, group residence, boarding house, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, DUI school, counseling center, clinic, halfway house, or other entity by these or other names, providing alcohol and drug abuse services.
- (23) **Governing Body.** The person or persons with primary legal authority and responsibility for the overall operation of the facility and to whom a director/chief executive officer is responsible. Depending upon the organizational structure, this body may be an owner or owners, a board of directors or other governing members of the licensee, or state, city or county officials appointed by the licensee, etc. The Governing Body maintains and controls the program and is legally responsible for the operation of the facility.
- (24) **Grievance Procedure.** A procedure for responding to an expression of a cause of distress believed by a participant, or by another acting on behalf of a participant, to constitute a reason for complaint.
- (25) **Incompetent.** For the purposes of this chapter only, a participant who has been determined to be incapable of decision-making by the proper legal authorities, or by the attending physician and the medical director, or by the attending physician and another physician.
- (26) **Legal Conservator.** The person legally appointed by a court of competent jurisdiction to have full or limited control of a participant's person and/or property.
- (27) **Legal Guardian.** Any person authorized to act for the participant pursuant to any provision of T.C.A. Title 34, Chapters 11 through 13.
- (28) **Licensee.** The person or entity to whom a license is issued. The licensee is held responsible for compliance with all rules and regulations.
- (29) **Life Threatening Or Serious Injury.** Injury requiring the patient to undergo significant additional diagnostic or treatment measures.
- (30) **Medically Futile Treatment.** Resuscitation efforts should be considered futile if they cannot be expected either to restore cardiac or respiratory function to the participant or to achieve the expressed goals of the participant. In the case of the incompetent participant, the surrogate expresses the goals of the patient.
- (31) **Neglect.** The deprivation of services, including adequate and nutritious food and drink, by a caretaker, which are necessary to maintain the health and welfare of the participant. Neglect includes "exploitation" as defined by these rules.
- (32) **Participant.** The individual who is the direct recipient of the services provided by a Prevention Program Facility subject to the licensure jurisdiction of the Tennessee Department of Health.
- (33) **Participant Record.** Participant record shall include documentation of the admission and exclusion criteria, and results of any referral.

(Rule 0940-5-40-.01, continued)

- (34) Patient Abuse. Patient neglect, intentional infliction of pain, injury, or mental anguish. Patient abuse includes the deprivation of services by a caretaker which are necessary to maintain the health and welfare of a patient or resident; however, the withholding of authorization for or provision of medical care to any terminally ill person who has executed an irrevocable living will in accordance with the Tennessee Right to Natural Death Law, or other applicable state law, if the provision of such medical care would conflict with the terms of such living will shall not be deemed "patient abuse" for purposes of these rules.
- (35) Qualified Alcohol and Other Drug Abuse Personnel - Persons who meet the criteria described in items (a), (b) and (c) as follows:
 - (a) Currently meet one (1) of the following conditions:
 - 1. Licensed or certified by the State of Tennessee as a physician, registered nurse, practical nurse, psychologist, psychological examiner, social worker, alcohol and other drugs of abuse counselor, teacher, professional counselor, or marital and family therapist, or, if there is no applicable licensure or certification by the state, has a bachelor's degree or above in a behavioral science or human development related area; or
 - 2. Actively engaged in a recognized course of study or other formal process for meeting criteria of part (1) of item (a) above, and directly supervised by a staff person who meets criteria in part (1) of item (a) above, who is trained and qualified as described in items (b) and (c) below, and who has a minimum of two (2) years experience in his/her area of practice; and
 - (b) Are qualified by education and/or experience for the specific duties of their position; and
 - (c) Are trained in alcohol or other drug specific information or skills. (Examples of types of training include, but are not limited to, alcohol or other drug specific inservices, workshops, substance abuse schools, academic coursework and internships, field placement, or residencies).
- (36) Restraint. Any physical or mechanical device or chemical substance used to restrict the movement of an individual or the movement or normal function of a portion of an individual's body.
- (37) Restrictive Procedure. A treatment procedure that limits the rights of the individual for the purpose of modifying problem behavior, including but not limited to, time out and restraint.
- (38) Resuscitative Services. See Cardiopulmonary Resuscitation.
- (39) Significant Others. Those individuals who are, or have been, significantly involved in the life of the participant.
- (40) Time Out. A behavior management procedure in which, contingent upon the demonstration of undesired behavior, the opportunity for positive reinforcement is withheld.
- (41) Unusual Event. The abuse of a patient or an unexpected occurrence or accident that results in death, life threatening or serious injury to a patient that is not related to a natural course of the patient's illness or underlying condition.
- (42) Unusual Event Report. A report form designated by the department to be used for reporting an unusual event.

(Rule 0940-5-40-.01, continued)

- (43) Volunteer. A person who is not paid by the licensee and whose varied skills are used by the licensee to support and supplement the efforts of the paid facility staff.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, 68-11-213 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Amendment filed February 23, 2007; effective May 9, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.02 LICENSING PROCEDURES.

- (1) No person, partnership, association, corporation, or any state, county, or local governmental unit, or any division, department, board or agency thereof, shall establish, conduct, operate or maintain in the State of Tennessee any Prevention Program Facility as defined, without having a license. A license shall be issued only to the applicant named and only for the premises listed in the application for licensure. Licenses are not transferable or assignable and shall expire annually on June 30th. The license shall be conspicuously posted in the Prevention Program Facility.

- (2) In order to make application for a license:

- (a) The applicant shall submit an application on a form provided by the department.
- (b) Each initial and renewal application for licensure shall be submitted with the appropriate fee or fees. All fees submitted are nonrefundable. The fee rate is based on the number of distinct facility categories to be operated at each residential and non-residential site. Offices providing alcohol and drug prevention and treatment services shall be classified as either a parent office or as a branch office of the facility and only one (1) license shall be required for the parent and its related branch offices. Any applicant who files an application during the fiscal year must pay the full license fee.

Non-Residential

Fees Per Site:

One (1) Distinct Facility Category..... \$ 600.00

- (c) The issuance of an application form is in no way a guarantee that the completed application will be accepted or that a license will be issued by the department. Participants shall not be admitted to the Prevention Program Facility until a license has been issued. Applicants shall not hold themselves out to the public as being an Prevention Program Facility until the license has been issued. A license shall not be issued until the facility is in substantial compliance with these rules and regulations.
- (d) The applicant shall prove the ability to meet the financial needs of the facility.
- (e) The applicant shall not use subterfuge or other evasive means to obtain a license, such as filing for a license through a second party when an applicant has been denied a license or has had a license disciplined or has attempted to avoid an inspection and/or review process by the department.
- (3) Every facility owner or operator shall designate a distinctive name for the facility which shall be on the application for a license. The name of a facility shall not be changed without first notifying the department in writing. The change will be made when renewal of the license is due.

(Rule 0940-5-40-.02, continued)

- (4) A proposed change of ownership, including a change in a controlling interest, shall be reported to the department a minimum of thirty (30) days prior to the change. Upon a change of ownership the existing license is terminated and the new owner is required to submit an application with the licensing fee, be inspected and meet the applicable standards and regulations as is required for initial licensing.
- (a) For the purpose of licensing, the licensee of a Prevention Program Facility has the ultimate responsibility for the operation of the facility, including the final authority to make or control operational decisions and legal responsibility for the business management. A change of ownership occurs whenever this ultimate legal authority for the responsibility of Prevention Program Facility operations is transferred.
 - (b) A change of ownership occurs whenever there is a change in the legal structure by which the Prevention Program Facility is owned and operated.
 - (c) Transactions constituting a change of ownership include, but are not limited to, the following:
 - 1. Transfer of the facility's legal title;
 - 2. Lease of the facility's operations;
 - 3. Dissolution of any partnership that owns, or owns a controlling interest in, the facility;
 - 4. One partnership is replaced by another through the removal, addition or substitution of a partner;
 - 5. Removal of the general partner or general partners, if the facility is owned by a limited partnership;
 - 6. Merger of a facility owner (a corporation) into another corporation where, after the merger, the owner's shares of capital stock are canceled;
 - 7. The consolidation of a corporate facility owner with one or more corporations; or
 - 8. Transfers between levels of government.
 - (d) Transactions which do not constitute a change of ownership include, but are not limited to, the following:
 - 1. Changes in the membership of a corporate board of directors or board of trustees;
 - 2. Two (2) or more corporations merge and the originally-licensed corporation survives;
 - 3. Changes in the membership of a non-profit corporation;
 - 4. Transfers between departments of the same level of government; or
 - 5. Corporate stock transfers or sales, even when a controlling interest.
 - (e) Management agreements are generally not changes of ownership if the owner continues to retain ultimate authority for the operation of the facility. However, if the

(Rule 0940-5-40-.02, continued)

ultimate authority is surrendered and transferred from the owner to a new manager, then a change of ownership has occurred.

- (f) Sale/lease-back agreements shall not be treated as changes in ownership if the lease involves the facility's entire real and personal property and if the identity of the leasee, who shall continue the operation, retains the exact same legal form as the former owner.
- (5) To be eligible for a license or renewal of a license, each Prevention Program Facility shall be periodically inspected for compliance with these regulations. If deficiencies are identified, an acceptable plan of correction shall be established and submitted to the department.
- (6) The department shall be notified at least thirty (30) days in advance of a facility's closing.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed February 23, 2007; effective May 9, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.03 DISCIPLINARY PROCEDURES.

- (1) The board may suspend or revoke a license for:
 - (a) Violation of federal or state statutes;
 - (b) Violation of the rules as set forth in this chapter;
 - (c) Permitting, aiding or abetting the commission of any illegal act in the facility;
 - (d) Conduct or practice found by the board to be detrimental to the health, safety, or welfare of the participants of the facility; or
 - (e) Failure to renew a license.
- (2) The board may consider all factors which it deems relevant, including but not limited to the following, when determining sanctions:
 - (a) The degree of sanctions necessary to ensure immediate and continued compliance;
 - (b) The character and degree of impact of the violation on the health, safety and welfare of the participants in the facility;
 - (c) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and
 - (d) Any prior violations by the facility of statutes, rules or orders of the board.
- (3) When a facility is found by the department to have committed a violation of this chapter, the department will issue to the facility a statement of deficiencies. Within ten (10) days of the receipt of the statement of deficiencies the facility shall return a plan of correction indicating the following:
 - (a) How the deficiency will be corrected;
 - (b) The date upon which each deficiency will be corrected;

(Rule 0940-5-40-.03, continued)

- (c) What measures or systemic changes will be put in place to ensure that the deficient practice does not recur; and
 - (d) How the corrective action will be monitored to ensure that the deficient practice does not recur.
- (4) Either failure to submit a plan of correction in a timely manner or a finding by the department that the plan of correction is unacceptable shall subject the facility's license to possible disciplinary action.
- (5) Any licensee or applicant for a license, aggrieved by a decision or action of the department or board, pursuant to this chapter, may request a hearing before the board. The proceedings and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101 et seq.
- (6) Reconsideration and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§4-5-202, 4-5-204, 4-5-219, 4-5-312, 4-5-316, 4-5-317, 68-11-202, 68-11-204, and 68-11-206 through 68-11-209 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed March 1, 2007; effective May 15, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.04 ADMINISTRATION.

- (1) The Governing Body shall ensure the following:
 - (a) The facility complies with all applicable federal, state, and local laws, ordinances, rules and regulations;
 - (b) The facility is administered and operated in accordance with written policies and procedures;
 - (c) General direction over the facility and establishment of policies governing the operation of the facility and the welfare of the individuals served; and
 - (d) That a responsible individual be designated for the operation of the facility in the absence of the licensee.
- (2) A parent office shall develop and maintain administrative controls of the branch office and house the administrative functions and administrative records of the facility. The parent office shall be ultimately responsible for human resource activities and all financial and contractual agreements for the facility, including both parent and branch offices. The administrative records of the facility shall be viewed by the inspectors and auditors at the parent office.
- (3) A branch office is a location where alcohol and drug prevention and treatment services are actually delivered. A branch office must be sufficiently close to share administrative services with the parent office and must maintain the same corporate name of the parent. The parent office shall make on-site supervisory visits to each branch office and shall maintain regular administrative contact with its branch offices. Documentation of this contact shall be maintained by the parent office. The parent office shall receive at least quarterly written staffing reports from its branch offices, including information regarding staffing needs, staffing

(Rule 0940-5-40-.04, continued)

patterns and staff productivity. A branch office shall be deemed to be sufficiently close if it is within 100 miles of the parent office; provided that the remaining criteria set forth in this paragraph are also applicable. A branch office that is greater than 100 miles from a parent office may be considered a branch office by the board if it otherwise meets the criteria set forth in this paragraph. Locations other than the parent office where merely administrative services take place, such as filling out paper work or conducting staff meetings, shall not be considered a branch office or part of the license and shall not be subject to inspection or audit.

- (4) The parent office of a facility shall have a clearly defined process to ensure that effective interchange occurs between the parent and branch regarding various functions including branch staffing requirements, branch office patient census, total visits provided by the branch, complaints, incident reports and referrals.
- (5) The branch office of a facility shall maintain the same standards of practice for the services delivered by the branch office, as the parent office of the facility, including forms, policies, procedures and service delivery standards. The parent office of a facility shall maintain documentation of integration between the parent office and its branch offices.
- (6) A current written policies and procedures manual shall be maintained. The manual must include the following elements:
 - (a) An organizational chart or a statement which clearly shows or describes the lines of authority between the governing body, the chief executive officer, and the staff;
 - (b) A description of facility services provided by the licensee. The description shall include at a minimum the hours of operation and admission and discharge criteria;
 - (c) Exclusion criteria for persons not appropriate for admission;
 - (d) A schedule of fees, if any, currently charged to the participant for all services provided by the licensee;
 - (e) A statement of participant rights;
 - (f) Grievance procedures for the participant, relative, or significant other;
 - (g) Policy and procedures which ensure the confidentiality of participant information and which include the following provisions:
 1. The facility staff shall comply with applicable confidentiality laws and regulations;
 2. The participant shall not be required to make public statements which acknowledge gratitude to the licensee or for the licensee's facility services;
 3. The participant shall not be required to perform in public gatherings; and
 4. Identifiable photographs of the participant shall not be used without the written and signed consent of the participant or the participant's legal guardian;
 - (h) A policy which prohibits participants from having any of the following responsibilities:
 1. Responsibility for the care of other participants; and
 2. Responsibilities allowing access to confidential information;

(Rule 0940-5-40-.04, continued)

- (i) The reporting and investigation of suspected or alleged abuse or neglect of participants, or other critical incidents. The procedures shall include provisions for corrective action to be taken as a result of such reporting and investigation;
- (j) Insure that volunteers, if used by the facility, are in a supportive capacity and are under the supervision of appropriate designated staff members and understand confidentiality and privacy of the participant;
- (k) Admitting and assessing deaf and hard of hearing individuals shall include, but are not limited to:
 - 1. The provision of intake screening and counseling personnel who are knowledgeable in issues affecting evaluation, psychosocial development, impacts of deafness/hard of hearing on individuals and families;
 - 2. Mechanisms for providing sign language interpreters for all participants whose primary means of communication is through manual communication;
 - 3. All facilities should have a telecommunication device for the deaf (TDD), but if not available, shall have a written arrangement for a relay system providing TDD type access (relay systems as described in the American Disabilities Act handbook published by U.S. Department of Justice and U.S. Equal Employment Opportunity Commission reference section 35.161); and
 - 4. All facilities having TDD access shall indicate it in publications such as telephone books, brochures, letterheads, etc.;
- (l) Participant behavior management techniques, if used by the facility;
- (m) Methods for managing disruptive behavior which respect the rights of their participants;
- (n) Any restrictive procedure shall be used by the facility only after all less-restrictive alternatives for dealing with the problem have been systematically tried or considered and have been determined to be inappropriate or ineffective:
 - 1. The restrictive procedure(s) shall be justifiable, and meet all requirements for use.
 - 2. Only qualified personnel that have been adequately trained may use restrictive procedures.
- (o) An assurance and procedures to be followed to comply with "drug free workplace" which will minimally include:
 - 1. Developing a policy explaining the rules about drugs in the workplace, including drug-testing procedures, if used by the facility;
 - 2. Distributing the policy to employees (documentation required);
 - 3. Providing periodic (at least once yearly) educational programs to employees regarding the policy and general substance abuse information;
 - 4. Referring substance abusing employees to an Employee Assistance Program or local alcohol and drug treatment center; and

(Rule 0940-5-40-.04, continued)

5. Distributing written information such as pamphlets and posters regarding substance abuse to employees;
 - (p) The plans and procedures to be followed in the event of an emergency involving participant care which will provide for emergency CPR and initial care at the facility, emergency transportation of participants, emergency medical care, and staff coverage in such events; and
 - (q) The agency shall have a policy addressing its awareness of, and intent to comply with, the Americans with Disabilities Act of 1990.
- (7) Financial Management.
- (a) The licensee holding or receiving funds or property for the participant as trustee or representative payee will adhere to all laws, state and federal, that govern his position and relation to the participant.
 - (b) The licensee shall prohibit staff and proprietors from borrowing money from participants.
 - (c) The licensee shall ensure that all money held and disbursed in the participant's behalf is for the strict, personal benefit of the participant.
 - (d) The licensee shall not mix its funds with those of the participant.
 - (e) The licensee shall not take funds or property of the participant for the facility's own use or gain.
- (8) Personnel.
- (a) A personnel record for each staff member of a facility shall include an application for employment and a record of any disciplinary action taken.
 - (b) Wage and salary information, time records, and authorization and record of leave, shall be maintained but may be kept in a separate location.
 - (c) A job description shall be maintained which includes the employment requirements and the job responsibilities for each facility staff position.
 - (d) A personnel record shall be maintained which verifies that each employee meets the respective employment requirements for the staff position held, including annual verification of basic skills and annual evaluation of personnel performance. This evaluation shall be in writing. There shall be documentation to verify that the employee has reviewed the evaluation and has had an opportunity to comment on it.
 - (e) Training and development activities which are appropriate in assisting the staff in meeting the needs of the participants being served shall be provided for each staff member including STD/HIV education. The provision of such activities shall be evidenced by documentation in the facility records.
 - (f) Training and development activities which are appropriate in assisting volunteers (if volunteers are used by the facility) in implementing their assigned duties shall be provided for each volunteer. The provision of such activities shall be evidenced by documentation in the facility's records.

(Rule 0940-5-40-.04, continued)

- (g) Direct-services staff members shall be competent persons aged eighteen (18) years of age or older.
 - (h) All new employees, including volunteers, who have routine contact with participants shall have a current tuberculosis test prior to employment.
 - (i) Employees shall have a tuberculin skin test annually and at the time of exposure to active TB and three months after exposure.
 - (j) Personnel records shall include date and type of tuberculin skin test used and date of tuberculin skin test results, date and results of chest x-ray, and any drug treatment for tuberculosis.
- (9) Staffing.
 - (a) Direct prevention services shall be provided by qualified alcohol and other drug abuse personnel, whose skills are evaluated annually.
 - (b) At least one (1) on-duty staff member shall be trained in CPR, first aid, and the Heimlich maneuver.
 - (c) The facility shall have a written weekly schedule of all program services and participant activities for each day specifying the types of services/activities and scheduled times.
 - (d) For life safety purposes, the facility shall staff a sufficient number of employees to meet the needs of the participants.
- (10) All health care facilities licensed pursuant to T.C.A. §§ 68-11-201, et seq. shall post the following in the main public entrance:
 - (a) Contact information including statewide toll-free number of the division of adult protective services, and the number for the local district attorney's office;
 - (b) A statement that a person of advanced age who may be the victim of abuse, neglect, or exploitation may seek assistance or file a complaint with the division concerning abuse, neglect and exploitation; and
 - (c) A statement that any person, regardless of age, who may be the victim of domestic violence may call the nationwide domestic violence hotline, with that number printed in boldface type, for immediate assistance and posted on a sign no smaller than eight and one-half inches (8½") in width and eleven inches (11") in height.

Postings of (a) and (b) shall be on a sign no smaller than eleven inches (11") in width and seventeen inches (17") in height.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-201, 68-11-202, 68-11-204, 68-11-206, 68-11-209, 68-11-222, 71-6-121 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 30, 2003; effective July 14, 2003. Amendment filed April 20, 2006; effective July 4, 2006. Amendment filed February 23, 2007; effective May 9, 2007. Amendment filed July 18, 2007; effective October 1, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.05 ADMISSIONS, DISCHARGES AND TRANSFERS.

- (1) The assessment process shall include the following:
 - (a) The information to be obtained on all applicants or referrals for admission;
 - (b) The procedures for accepting referrals from outside agencies or organizations;
 - (c) The records to be kept on all participants;
 - (d) Any prospective participant data to be recorded during the assessment process; and
 - (e) The procedures to be followed when an applicant or a referral is found eligible for admission.

Authority: T.C.A. §§4-5-202, 68-11-202, 68-11-204, 68-11-206, and 68-11-209 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.06 BASIC SERVICES.

- (1) Assessment.
 - (a) The facility shall complete an assessment of the participant to document admission or exclusion criteria.
 - (b) The assessment shall include participant activities which are related to specified risk factors to be addressed within the particular service/program component.
 - (c) The assessment shall be signed by appropriate staff.
- (2) Education Services.
 - (a) Education Services shall consist of the following components:
 1. Critical life and social skills;
 2. Decision-making;
 3. Refusal skills;
 4. Critical analysis; and
 5. Systematic judgment.
 - (b) Educational sessions shall consist of, at least, two-way communication between the educator or facilitator and the participant using the component in (2)(a) above.
 - (c) All educational services shall be provided by qualified alcohol and other drug abuse personnel.
- (3) Information Management

(Rule 0940-5-40-.06, continued)

- (a) The facility disseminates information to the identified audience on, at least, the following topics:
 - 1. Awareness and knowledge of the nature and extent of substance abuse and addiction and its effects on individuals, families and communities; and
 - 2. Awareness of available prevention programs and services.
 - (b) Each prevention program shall have a consumer information system for collecting social-demographic information and data on alcohol and other drug prevention services provided by the program.
 - (c) Each prevention program shall have a financial information system for collecting financial information and a system for collecting data related to alcohol and other drug prevention services provided by the program.
- (4) Community-Based Processes
- The facility shall have an effective inter-agency collaboration that provides for coalition building and networking. The facility shall provide documentation that supports community-based process strategies.
- (5) Alternative Activities
- The program shall provide alternative activities to participants which would minimize or alleviate the need to use alcohol, tobacco, and other drugs.
- (6) Performance Improvement.
- (a) The facility shall ensure that there is an effective, facility-wide performance improvement program to evaluate participant care and performance of the organization.
 - (b) The performance improvement program shall be ongoing and have a written plan of implementation which assures that:
 - 1. All organized services related to participant care, including services furnished by a contractor, are evaluated; and
 - 2. All services performed in the facility are evaluated.
 - (c) The facility shall develop and implement plans for improvement to address deficiencies identified by the performance improvement program and must document the outcome of the remedial action.
 - (d) Performance improvement program records are not disclosable, except when such disclosure is required to demonstrate compliance with this section.
 - (e) Good faith attempts by the performance improvement program Committee to identify and correct deficiencies will not be used as a basis for sanctions.
- (7) Infection Control.

(Rule 0940-5-40-.06, continued)

- (a) The facility shall provide a sanitary environment to avoid sources and transmission of infections and communicable diseases. There shall be an active program for the prevention, control, and investigation of infections and communicable diseases.
- (b) The administrator shall develop guidelines and techniques for the prevention, surveillance, control and reporting of facility infections. Duties of the program shall include the establishment of:
 - 1. Written infection control policies;
 - 2. Techniques and systems for identifying, reporting, investigating and controlling infections in the facility; and
 - 3. Written procedures governing the use of aseptic techniques and procedures in the facility.
- (c) The administrator shall ensure that the facility-wide performance improvement program and training programs address problems identified and shall be responsible for the implementation of successful corrective action plans of the affected problem areas in infection control.
- (d) The facility shall develop policies and procedures for testing a participant's blood for the presence of the hepatitis B virus and the HIV virus in the event that an employee of the facility, a student studying at the facility, or other health care providers rendering services at the facility is exposed to a participant's blood or other body fluid. The testing shall be performed at no charge to the participant, and the test results shall be confidential.
- (e) The facility and its employees shall adopt and utilize standard or universal precautions of the Centers for Disease Control (CDC) for preventing transmission of infections, HIV, and communicable diseases.
- (f) Guidelines for human subjects in research, if the facility is involved or planning to be involved in such research.
 - 1. A tuberculin skin test within the first seven (7) days of admission or documentation that such a test was performed within the past thirty (30) days;
 - 2. Infectious disease testing will be made on a voluntary basis for any participant who requests it and be documented in appropriate records;
 - 3. Assurance that a participant's HIV, other STD, or tuberculosis status be kept confidential in accordance with "Confidentiality of Alcohol and Drug Abuse Patient Records" (42 CFR, Part 2);
 - 4. Documentation on the establishment of linkages between the facility and the local health department to ensure participants receive appropriate medical care relative to their infection and/or exposure to TB, Hepatitis B, and STD (including HIV); such as, establish contact between the local health department and the facility to communicate appropriate information to assure that the participant receives appropriate care;
 - 5. Decreasing transmission through environmental precautions and appropriate sanitation/ventilation measures;

(Rule 0940-5-40-.06, continued)

6. Informed consent of clients before screening and treatment; and
 7. Conducting case management activities to ensure that participants receive HIV/AIDS, hepatitis B virus, other STD and tuberculosis services.
- (8) Housekeeping.
- (a) Each facility shall have routine cleaning of articles and surfaces such as furniture, floors, walls, ceilings, supply, exhaust grills and lighting fixtures.
 - (b) Sufficient and proper cleaning supplies and equipment shall be available to housekeeping staff. Cleaning supplies, toxic substances, and equipment shall be secured at all times to prevent access by participants. Toxic substances shall not be left unattended when not secured.
 - (c) A closet for janitorial supplies shall be provided.

Authority: T.C.A. §§ 68-11-202, 68-11-204, 68-11-206, and 68-11-216 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.07 BUILDING STANDARDS.

- (1) The alcohol and drug prevention program facility must be constructed, arranged, and maintained to ensure the safety of the participants.
- (2) The condition of the physical plant and the overall alcohol and drug prevention program facility environment must be developed and maintained in such a manner that the safety and well-being of participants are assured.
- (3) When construction is planned by any facility for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. For the purpose of life safety, alcohol and drug prevention program facilities are required to meet business occupancies and all new facilities shall conform to the current addition of the Standard Building Code, the National Fire Protection Code (NFPA), and the National Electrical Code, as adopted by the Board for Licensing Health Care Facilities. All new and existing facilities are subject to the requirements of the Americans with Disabilities Act (A.D.A.).
- (4) Flammable and combustible liquids such as gasoline, cleaning fluids, kerosene, turpentine etc., shall be stored in safety containers and stored at least 16 feet from the building or stored in a U.L. approved/listed cabinet and ventilated as prescribed by code requirement or manufacturers' recommendation.
- (5) Mechanical
 - (a) All units having a total of 2,000 cubic feet per minute (CFM) or greater in a zone shall shut down when the fire alarm panel is activated.
- (6) Electrical
 - (a) The electrical system, components, equipment and appliances shall be kept in good repair at all times.

(Rule 0940-5-40-.07, continued)

- (b) Knob and Tube wiring is prohibited.
 - (c) Electrical cords shall not have splices.
 - (d) Electric circuit breaker panel boxes shall not have open slots exposing wiring.
 - (e) Circuit breakers shall be properly labeled.
 - (f) In all new facilities or renovations to existing electrical systems, the installation must be approved by an inspector or agency authorized by the State Fire Marshall.
 - (g) The electrical system shall not be overloaded.
 - (h) Ground-Fault Circuit Interrupters (GFCI) are required in all wet areas, such as kitchens, laundries, janitor closets, bath and toilet rooms, etc. and within six (6) feet of any laboratory.
- (7) Fire Alarm
- (a) Manual pull stations shall be installed in paths of travel to exits and by each required exit.
 - (b) All alarm devices shall be connected to the fire alarm panel.
 - (c) The fire alarm panel shall have auxiliary power such as batteries or generators.
 - (d) All sprinkler systems are to be electrically supervised.
 - (e) Structures with atriums, vertical openings or monumental stairs open to another floor must have their fire alarm system automatically transmit an alarm to the municipal fire department or to an agency acceptable to this department with equipment which meets NFPA signaling and standard building codes. Fire protection systems and smoke evacuation systems must be on emergency power.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-11-202, 68-11-206, and 68-11-209 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed June 21, 2007; effective September 4, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.08 LIFE SAFETY.

- (1) Any alcohol and drug prevention program facility which complies with the required applicable building and fire safety regulations at the time the board adopts new codes or regulations will, so long as such compliance is maintained (either with or without waivers of specific provisions), be considered to be in compliance with the requirements of the new codes or regulations.
- (2) The facility shall provide fire protection by the elimination of fire hazards, by the installation of necessary fire fighting equipment and by the adoption of a written fire control plan. All fires which result in a response by the local fire department shall be reported to the department within seven (7) days. The report shall contain sufficient information to ascertain the nature and location of the fire, its probable cause and any injuries incurred by any person or persons as a result of the fire. Records which document and evaluate these incidents must be maintained for at least three (3) years.

(Rule 0940-5-40-.08, continued)

- (3) The facility shall have a written emergency plan to document instructions to staff, upon employment, and participants, upon enrollment, in fire evacuation procedures. The plan shall include actions to be taken in inclement weather and internal and external emergencies. Evacuation plans shall be posted in prominent areas such as reception areas, near door in class rooms, etc. and shall designate meeting places outside the building in event of emergencies.
- (4) Corridor doors shall not have louvers.
- (5) Battery powered emergency lighting shall be installed in corridors, common areas and in stair ways.
- (6) Corridors shall be lighted at all times, to a minimum of one foot candle.
- (7) Corridors and exit doors shall be kept clear of equipment, furniture and other obstacles at all times. There shall be a clear passage at all times from the exit doors to a safe area.
- (8) Corridors in multi-storied buildings shall have two exits remote from each other. At least one exit shall be directly to the outside.
- (9) Storage beneath any stair is prohibited.
- (10) Combustible finishes and furnishings shall not be used.
- (11) Open flame and portable space heaters shall not be permitted in the facility. Cooking appliances other than microwave ovens shall not be allowed in the facility.
- (12) All heaters shall be guarded and spaced to prevent ignition of combustible material and accidental burns. The guard shall not have a surface temperature greater than 120°F.
- (13) Fireplaces and/or fireplace inserts may be used only if provided with guards or screens which are secured in place. Fireplaces and chimneys shall be inspected and cleaned annually and verified documentation shall be maintained.
- (14) All electrical equipment shall be maintained in good repair and in safe operating condition.
- (15) Electrical cords shall not be run under rugs or carpets.
- (16) The electrical systems shall not be overloaded. Power strips must be equipped with circuit breakers. Extension cords shall not be used.
- (17) Fire extinguishers, complying with NFPA 10, shall be provided and mounted to comply with NFPA 10. An extinguisher in the kitchen area shall be a minimum of 2-A:10 B:C and an extinguisher with a rating of 20-A shall be adjacent to every hazardous area. The minimum travel distance shall not exceed fifty (50) feet between the extinguishers.
- (18) Smoking and smoking materials shall be permitted only in designated areas. Ashtrays must be provided wherever smoking is permitted. The facility shall have written policies and procedures for smoking within the facility which shall designate a room or rooms to be used exclusively for participants who smoke. The designated smoking room or rooms shall not be the dining room or activity room.
- (19) Trash and other combustible waste shall not be allowed to accumulate within and around the facility and shall be stored in appropriate containers with tight-fitting lids. Trash containers shall be UL approved.

(Rule 0940-5-40-.08, continued)

- (20) All safety equipment shall be maintained in good repair and in a safe operating condition.
- (21) Janitorial supplies shall not be stored in the kitchen, food storage area, dining area or participant accessible areas.
- (22) Emergency telephone numbers must be posted near a telephone accessible to the participants.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-204, 68-11-206, 68-11-209, and 68-11-216 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 30, 2003; effective July 14, 2003. Amendment filed June 21, 2007; effective September 4, 2007. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.09 INFECTIOUS AND HAZARDOUS WASTE.

- (1) Each facility must develop, maintain and implement written policies and procedures for the definition and handling of its infectious and hazardous waste. These policies and procedures must comply with the standards of this section and all other applicable state and federal regulations.
- (2) Waste must be packaged in a manner that will protect waste handlers and the public from possible injury and disease that may result from exposure to the waste. Such packaging must provide for containment of the waste from the point of generation up to the point of proper treatment or disposal. Packaging must be selected and utilized for the type of waste the package will contain, how the waste will be treated and disposed, and how it will be handled and transported, prior to treatment and disposal.
- (3) After packaging, waste must be handled and transported by methods ensuring containment and preserving the integrity of the packaging, including the use of secondary containment where necessary.
- (4) Waste must be stored in a manner and location which affords protection from animals, precipitation, wind, and direct sunlight, does not present a safety hazard, does not provide a breeding place or food source for insects or rodents and does not create a nuisance.
- (5) In the event spills, or other incidents where there is a loss of containment of waste, the facility must ensure that proper actions are immediately taken to:
 - (a) Isolate the area;
 - (b) Repackage all spilled waste and contaminated debris in accordance with the requirements of paragraph (4) of this rule; and
 - (c) Sanitize all contaminated equipment and surfaces appropriately.

Authority: T.C.A. §§4-5-202 through 4-5-206, 68-11-202, 68-11-204, 68-11-206, and 68-11-209 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.10 RECORDS AND REPORTS.

- (1) A yearly statistical report, the "Joint Annual Report of Prevention Program Facilities", shall be submitted to the department. The forms are mailed to each Prevention Program Facility by the department each year. The forms shall be completed and returned to the department within sixty (60) days following receipt of the form.
- (2) Participant Records.
 - (a) The governing body shall ensure that an individual participant record is maintained for each participant being served which minimally includes the following information:
 1. The name of the participant;
 2. The address of the participant;
 3. The telephone number of the participant;
 4. The sex of the participant;
 5. The date of the participant's birth;
 6. The date of the participant's admission to the facility;
 7. The source of the participant's referral to the facility;
 8. The name, address, and telephone number of a parent/guardian;
 9. If the facility charges fees for its services, a written fee agreement dated and signed by the participant (or the participant's legal representative) prior to provision of any services other than emergency services. This agreement shall include at least the following information:
 - (i) The fee or fees to be paid by the participant;
 - (ii) The services covered by such fees; and
 - (iii) Any additional charges for services not covered by the basic service fee;
 10. Appropriate signed and dated informed consent and authorization forms for the release or obtainment of information about the participant;
 11. Documentation that the participant or someone acting on behalf of the participant has been informed of the participant's rights and responsibilities and of the facility's general rules affecting the participant;
 12. Reports of medical problems, accidents, seizures and illnesses, and treatments for such accidents, seizures and illnesses;
 13. Reports of significant behavior incidents;
 14. Reports of any instance of restraint or restriction with documented justification and authorization; and

(Rule 0940-5-40-.10, continued)

15. A discharge summary within thirty (30) days of release, discharge, or transfer which shall minimally include but not be limited to the following:
 - (i) Date of discharge;
 - (ii) Reasons for discharge;
 - (iii) Initial condition and condition of participant at discharge;
 - (iv) Medication summary if applicable;
 - (v) Prevention activities provided and activities/outcome results; and
 - (vi) The signature of the staff member completing the summary.
- (b) Records shall be retained for a minimum of five (5) years even if the facility discontinues operations.
- (c) Upon the closing of any facility, a person of authority representing the facility may request final storage or disposition of the facility's records by the department.
- (3) The Prevention Program Facility shall retain legible copies of the following records and reports in the facility for the next thirty-six (36) months following their issuance:
 - (a) Local fire safety inspections, if any;
 - (b) Local building code inspections, if any;
 - (c) Fire marshal reports, if any;
 - (d) Department licensure and fire safety inspections and surveys;
 - (e) Maintenance records of all safety equipment and vehicles used in participant transportation; and
 - (f) Any other inspections conducted by the department, and federal, state or local agencies.
- (4) Copies of the records and reports listed in paragraph (3) shall be maintained in a location convenient to the public and during normal business hours. They shall be made available for inspection by any person who requests to view them.
- (5) All applications, certificates, records, reports and all legal documents, petitions and records made or information received pursuant to treatment in a Prevention Program Facility directly or indirectly identifying a participant or former participant shall be kept confidential and shall not be disclosed by any person except insofar:
 - (a) As a court may direct upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to public interest or to the detriment of either party to the proceedings, consistent with the provisions of 42 CFR, Part 2.
 - (b) Nothing in this subparagraph shall prohibit disclosure, upon proper inquiry, of information as to the current medical condition of a resident to any members of the

(Rule 0940-5-40-.10, continued)

family of a participant or to his/her relatives or friends, providing that conditions of 42 CFR, Part 2 have been met.

- (6) Unusual events shall be reported by the facility to the Department of Health in a format designed by the Department within seven (7) business days of the date of the identification of the abuse of a patient or an unexpected occurrence or accident that results in death, life threatening or serious injury to a patient.
 - (a) The following represent circumstances that could result in an unusual event that is an unexpected occurrence or accident resulting in death, life threatening or serious injury to a patient, not related to a natural course of the patient's illness or underlying condition. The circumstances that could result in an unusual event include, but are not limited to:
 1. medication errors;
 2. aspiration in a non-intubated patient related to conscious/moderate sedation;
 3. intravascular catheter related events including necrosis or infection requiring repair or intravascular catheter related pneumothorax;
 4. volume overload leading to pulmonary edema;
 5. blood transfusion reactions, use of wrong type of blood and/or delivery of blood to the wrong patient;
 6. perioperative/periprocedural related complication(s) that occur within 48 hours of the operation or the procedure, including a procedure which results in any new central neurological deficit or any new peripheral neurological deficit with motor weakness;
 7. burns of a second or third degree;
 8. falls resulting in radiologically proven fractures, subdural or epidural hematoma, cerebral contusion, traumatic subarachnoid hemorrhage, and/or internal trauma, but does not include fractures resulting from pathological conditions;
 9. procedure related incidents, regardless of setting and within thirty (30) days of the procedure and includes readmissions, which include:
 - (i) procedure related injury requiring repair or removal of an organ;
 - (ii) hemorrhage;
 - (iii) displacement, migration or breakage of an implant, device, graft or drain;
 - (iv) post operative wound infection following clean or clean/contaminated case;
 - (v) any unexpected operation or reoperation related to the primary procedure;
 - (vi) hysterectomy in a pregnant woman;
 - (vii) ruptured uterus;
 - (viii) circumcision;

(Rule 0940-5-40-.10, continued)

- (ix) incorrect procedure or incorrect treatment that is invasive;
 - (x) wrong patient/wrong site surgical procedure;
 - (xi) unintentionally retained foreign body;
 - (xii) loss of limb or organ, or impairment of limb if the impairment is present at discharge or for at least two (2) weeks after occurrence;
 - (xiii) criminal acts;
 - (xiv) suicide or attempted suicide;
 - (xv) elopement from the facility;
 - (xvi) infant abduction, or infant discharged to the wrong family;
 - (xvii) adult abduction;
 - (xviii) rape;
 - (xix) patient altercation;
 - (xx) patient abuse, patient neglect, or misappropriation of resident/patient funds;
 - (xxi) restraint related incidents; or
 - (xxii) poisoning occurring within the facility.
- (b) Specific incidents that might result in a disruption of the delivery of health care services at the facility shall also be reported to the department, on the unusual event form, within seven (7) days after the facility learns of the incident. These specific incidents include the following:
1. strike by the staff at the facility;
 2. external disaster impacting the facility;
 3. disruption of any service vital to the continued safe operation of the facility or to the health and safety of its patients and personnel; and
 4. fires at the facility which disrupt the provision of patient care services or cause harm to patients or staff, or which are reported by the facility to any entity, including but not limited to a fire department, charged with preventing fires.
- (c) For health services provided in a "home" setting, only those unusual events actually witnessed or known by the person delivering health care services are required to be reported.
- (d) Within forty (40) days of the identification of the event, the facility shall file with the department a corrective action report for the unusual event reported to the department. The department's approval of a Corrective Action Report will take into consideration whether the facility utilized an analysis in identifying the most basic or causal factor(s)

(Rule 0940-5-40-.10, continued)

that underlie variation in performance leading to the unusual event by (a) determining the proximate cause of the unusual event, (b) analyzing the systems and processes involved in the unusual event, (c) identifying possible common causes, (d) identifying potential improvements, and (e) identifying measures of effectiveness. The corrective action report shall either: (1) explain why a corrective action report is not necessary; or (2) detail the actions taken to correct any error identified that contributed to the unusual event or incident, the date the corrections were implemented, how the facility will prevent the error from recurring in the future and who will monitor the implementation of the corrective action plan.

- (e) The department shall approve in writing, the corrective action report if the department is satisfied that the corrective action plan appropriately addresses errors that contributed to the unusual event and takes the necessary steps to prevent the recurrence of the errors. If the department fails to approve the corrective action report, then the department shall provide the facility with a list of actions that the department believes are necessary to address the errors. The facility shall be offered an informal meeting with the Commissioner or the Commissioner's representative to attempt to resolve any disagreement over the corrective action report. If the department and the facility fail to agree on an appropriate corrective action plan, then the final determination on the adequacy of the corrective action report shall be made by the Board after a contested case hearing.
- (f) The event report reviewed or obtained by the department shall be confidential and not subject to discovery, subpoena or legal compulsion for release to any person or entity, nor shall the report be admissible in any civil or administrative proceeding other than a disciplinary proceeding by the department or the appropriate regulatory board. The report is not discoverable or admissible in any civil or administrative action except that information in any such report may be transmitted to an appropriate regulatory agency having jurisdiction for disciplinary or license sanctions against the impacted facility. The department must reveal upon request its awareness that a specific event or incident has been reported.
- (g) The department shall have access to facility records as allowed in Title 68, Chapter 11, Part 3. The department may copy any portion of a facility medical record relating to the reported event unless otherwise prohibited by rule or statute. This section does not change or affect the privilege and confidentiality provided by T.C.A. §63-6-219.
- (h) The department, in developing the unusual event report form, shall establish an event occurrence code that categorizes events or specific incidents by the examples set forth above in (a) and (b). If an event or specific incident fails to come within these examples, it shall be classified as "other" with the facility explaining the facts related to the event or incident.
- (i) This does not preclude the department from using information obtained under these rules in a disciplinary action commenced against a facility, or from taking a disciplinary action against a facility. Nor does this preclude the department from sharing such information with any appropriate governmental agency charged by federal or state law with regulatory oversight of the facility. However, all such information must at all times be maintained as confidential and not available to the public. Failure to report an unusual event, submit a corrective action report, or comply with a plan of correction as required herein may be grounds for disciplinary action pursuant to T.C.A. §68-11-207.
- (j) The affected patient and/or the patient's family, as may be appropriate, shall also be notified of the event or incident by the facility.

(Rule 0940-5-40-.10, continued)

- (k) During the second quarter of each year, the Department shall provide the Board an aggregate report summarizing by type the number of unusual events and incidents reported by facilities to the Department for the preceding calendar year.
- (l) The Department shall work with representatives of facilities subject to these rules, and other interested parties, to develop recommendations to improve the collection and assimilation of specific aggregate health care data that, if known, would track health care trends over time and identify system-wide problems for broader quality improvement. The goal of such recommendations should be to better coordinate the collection of such data, to analyze the data, to identify potential problems and to work with facilities to develop best practices to remedy identified problems. The Department shall prepare and issue a report regarding such recommendations.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, 68-11-206, 68-11-207, 68-11-209, 68-11-210, 68-11-211, and 68-11-213 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 30, 1976; effective August 30, 1976. Repeal and new rule filed September 12, 1994; effective November 26, 1994. Original rule filed July 27, 2000; effective October 10, 2000. Amendment filed April 11, 2003; effective June 25, 2003. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.11 PARTICIPANT RIGHTS.

- (1) The facility shall demonstrate respect and support for each participant's rights. The facility shall insure each client receives professional and humanistic services in a manner that protects their fundamental human, civil, constitutional and statutory rights. Policies and procedures shall be developed, approved, and maintained to ensure consistent application and communication throughout the organization.
 - (a) The following rights of participants shall apply whenever appropriate:
 1. Impartial access to treatment or accommodations that are available or medically indicated regardless of race, creed, sex, national origin, or sources of payment for care;
 2. Considerate, respectful care at all times and under all circumstances, with recognition of his/her personal dignity, values and beliefs;
 3. Refusal of treatment to the extent permitted by law;
 4. Receive information necessary to give informed consent prior to any treatment or services;
 5. Identity and professional status of individuals providing services to him/her and to know who is primarily responsible for his/her care or treatment;
 6. Expectation of reasonable safety insofar as family practices and environment are concerned;
 7. Confidentiality of participant's records;
 8. Ability to voice complaints regarding care without fear of discrimination or compromising their future care;

(Rule 0940-5-40-.11, continued)

9. Self-determination which encompasses the right to make choices regarding life sustaining treatment, including resuscitative services. Self-determination may be effectuated by an advance directive;
 10. Refusal to participate in experimentation or research activities involved in his/her treatment;
 11. Information about fee schedules and payment policies; and
 12. An environment conducive to personal and informational privacy.
- (b) The participant, family, and or significant other shall be given information, when appropriate, regarding:
1. The participant's condition;
 2. Proposed treatments, procedures or activities;
 3. Potential benefits and drawbacks of proposed treatments or services;
 4. Problems related to recuperation;
 5. Alternative treatment(s) or services;
 6. Any business relationship among individuals treating the participant or between the organization and any other health care, service, or educational institutions involved in the participant's care.
- (c) Participants shall not be abused, neglected, or administered corporal punishment.

Authority: T.C.A. §§4-5-202, 68-11-202, and 68-11-209 and Executive Order 44 (February 23, 2007).
Administrative History: Original rule filed July 27, 2000; effective October 10, 2000. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.12 REPEALED.

Authority: T.C.A. §§4-5-202, 4-5-204, 68-11-202, and 68-11-209 and Executive Order 44 (February 23, 2007). **Administrative History:** Original rule filed July 27, 2000; effective October 10, 2000. Repeal filed April 30, 2003; effective July 14, 2003. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.

0940-5-40-.13 DISASTER PREPAREDNESS.

- (1) The administration of every facility shall have in effect and available for all supervisory personnel and staff, written copies of the following required disaster plans, for the protection of all persons in the event of fire and other emergencies for evacuation to areas of refuge and/or evacuation from the building. A detailed log with staff signatures of training received shall be maintained. All employees shall be trained annually as required in the following plans and shall be kept informed with respect to their duties under the plans. A copy of the plans shall be readily available at all times in the telephone operator's position or at the security center. Each of the following plans shall be exercised annually prior to the month listed in each plan:
 - (a) Fire Safety Procedures Plan (to be exercised at any time during the year) shall include:

(Rule 0940-5-40-.13, continued)

1. Minor fires;
 2. Major fires;
 3. Fighting the fire;
 4. Evacuation procedures; and
 5. Staff functions by department and job assignment.
- (b) Tornado/Severe Weather Procedures Plan shall include:
1. Staff duties by department and job assignment; and
 2. Evacuation procedures.
- (c) Bomb Threat Procedures Plan (to be exercised at any time during the year) shall include:
1. Staff duties;
 2. Search team, searching the premises;
 3. Notification of authorities;
 4. Location of suspicious objects; and
 5. Evacuation procedures.
- (d) Floods Procedures Plan if applicable:
1. Staff duties;
 2. Evacuation procedures; and
 3. Safety procedures following the flood.
- (e) Severe Cold Weather and Severe Hot Weather Procedures Plans shall include:
1. Staff duties;
 2. Equipment failures;
 3. Insufficient HVAC on emergency power;
 4. Evacuation procedures; and
 5. Emergency food service.
- (f) Earthquake Disaster Procedures Plans shall include:
1. Staff duties;
 2. Evacuation procedures;

(Rule 0940-5-40-.13, continued)

3. Safety procedures; and
 4. Emergency services.
- (2) All facilities shall participate in the Tennessee Emergency Management local/county emergency plan on an annual basis. Participation includes but is not limited to filling out and submitting a questionnaire on a form to be provided by the Tennessee Emergency Management Agency. Documentation of participation shall be maintained and shall be made available to survey staff as proof of participation.

Authority: T.C.A. §§4-5-202, 68-11-202, and 68-11-209 and Executive Order 44 (February 23, 2007).

Administrative History: Original rule filed July 27, 2000; effective October 10, 2000. Per Executive Order 44 (February 23, 2007), rule was transferred from 1200-8-20 on May 15, 2008.